IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 13633 of 1997

Between:

Parsa Seetha Rama Rao S/o. late Ramachander Rao
aged 60 years, occ: Agriculture,

R/o. Secunderabad.

..... PETITIONER

AND

The Spl. Tahsildar (Land Acquisition) Manugur,

(at pressent Spl. Dy. Collector)
(Land Acquisition), I.P.T. & Railways, Khammam).

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue appropriate writ, direction or order more particularly one in the nature of mandamus directing the respondent to refer the petitions filed by the petitioner under Section 18 of the Land Acquisition Act, 1894, in respect of O.P.Nos.99/91 to 101/91, 103/91 to 107/91, 109/91 to 115/91, 118/91 to 123/91, to Civil Court for determination of proper market value of the petitioner's acquired lands as on the date of notification under Section 4(1) of the Act after declaring the orders of the respondent in Rc.No.B/984/94, dated 16-12-1996 and 29-1-1997 as against to law, equity and justice.

Counsel for the Petitioner:MR.HARI SREEDHAR

Counsel for the Respondent No.: GP FOR LAND ACQUISITION

The Court made the following :

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ORDER:

The petitioner filed the present Writ Petition praying for a writ of mandamus directing the respondent to refer the petitions filed by the petitioner under Section 18 of the Land Acquisition Act, 1894, hereinafter in short referred to as “Act” for the purpose of convenience, in respect of O.P.Nos.99/91 to 101/91, 103/91 to 107/91, 109/91 to 115/91, 118/91 to 123/91, to Civil Court for determination of proper market value of the petitioner’s acquired lands as on the date of notification under Section 4(1) of the Act after declaring the orders of the respondent in Rc.No.B/984/94, dated 16-12-1996 and 29-1-1997 as against to law, equity and justice and to pass such other suitable orders.

The specific case of the petitioner is that no notice was served on him and the petitioner could not attend the award enquiry conducted by the respondent and in fact on 5-12-1993 the petitioner met with a serious road accident which resulted in multiple fractures of his right leg and after passing the award the respondent had not served any notice under Section 12(2) of the Act. It is also the case of the petitioner that there was rival claim of third parties over the compensation payable to the lands acquired which had been

furnished in detail in Annexure-I and the respondent deposited the amounts payable towards compensation in Subordinate Judge's Court at Kothagudem in Khammam District referring the disputes under Section 30 of the Act and the same were numbered as O.P.Nos.99/91 to 123/91. It is further averred that the petitioner came to know about the said acquisition and reference of the disputes under Section 30 of the Act to the Civil Court only after his recovery from the fractures. It is further stated that except O.P.No.102/91 and 108/91 all other O.Ps. were compromised before Lok Adalat at Kothagudem and Khammam and immediately thereafter decrees were prepared and the petitioner obtained certified copies of the decrees in the other O.Ps. and filed cheque petitions before the Subordinate Judge, Kothagudem where the compensation amount had been deposited for receiving the compensation in lieu of settlement between the petitioner and the rival claimants. The details relating to the cheque petition numbers and the dates on which the Sub-Court, Kothagudem issued cheques also had been furnished. It is specifically stated that at the time of receiving the cheques from the Court, the petitioner filed protest memos in writing reserving his right to file petitions under Section 18 of the Act seeking reference of his cases to Civil Court for fixing the market value of his acquired lands as on the date of notification under Section 4(1) of the Act. It is also further averred that the petitioner filed the petitions under Section 18

of the Act within time before the respondent praying for reference of his cases but however the respondent by his proceedings Rc.B/984/94 dated 16-12-1996 and 29-1-1997 rejected his petitions filed under Section 18 of the Act on the ground that the petitioner had not filed petitions within six weeks from the date of the Judgment of the Subordinate Judge, Kothagudem as contemplated by Section 18 of the Act. It is further stated that the petitioner received compensation amount through cheques from Subordinate Judge, Kothagudem in O.P.Nos.100, 101, 103 to 107, 109 to 112/91, 115, 116, 118 and 120/91 to 123/91 on 27-4-1996 under protest and immediately on 30-4-1996 filed petitions under Section 18 of the Act. Similarly, the petitioner received compensation amount through cheques from Subordinate Judge, Kothagudem in O.P.Nos.113/91 and 119/91 on 12-6-1996 and in O.P.Nos.99/91 and 114/91 on 17-9-1996 and filed petitions under Section 18 of the Act on 13-6-1996 and 18-10-1996 respectively. In the said circumstances, the present Writ Petition is filed by the writ petitioner praying for the relief referred to supra.

Sri Hari Sreedhar, the learned Counsel representing the writ petitioner had taken this Court through different provisions of the Act specified above in general and explained the scope and ambit of Sections 18, 30, 31 and Section 12 of the Act in detail. The Counsel would contend that rejection cannot be sustained for the reason that the

petitioner never participated in the proceedings. The learned Counsel also had drawn the attention of this Court to the State Amendment in this regard. The learned Counsel also would contend that these matters were referred to Civil Court and compromise had been arrived at and ultimately the Court passed the decrees. Except in four O.Ps., in all other O.Ps., cheques were received only under protest. The reckoning of the period of limitation by the respondent is totally unsustainable since the period may have to be reckoned with only from the dates on which the cheques had been issued since that is the date of offer of payment of the petitioner and protest can be made only at that stage and rightly protest memos had been filed. Even otherwise, the learned Counsel would contend that there appears to be some anomaly when the provisions of Sections 18 and 31 of the Act are carefully scrunitised. At any rate, the Counsel would contend that the specific averment made that no notice had been served under Section 12(2) of the Act had not been denied inasmuch as no counter affidavit is forthcoming from the respondent in this regard and on this ground alone the writ petitioner is bound to succeed and hence reasons recorded for rejection are totally unsustainable and hence suitable directions may have to be issued.

The learned Government Pleader for Land Acquisition after taking this Court through the material available on record had taken a stand that as per the instructions furnished to him, these matters already

had been referred under Section 18 of the Act and no further orders need be passed. However this statement made by the learned Government Pleader for Land Acquisition had been controverted by the learned Counsel representing the writ petitioner.

Heard both the Counsel.

At the outset, it may be stated that except the learned Government Pleader for the Land Acquisition making the statement on instructions before this Court, no counter affidavit as such had been filed and hence this Court may have to take that the averments made in the affidavit filed in support of the Writ Petition, in the absence of denial of the same, are to be taken to have been admitted.

Section 18 of the Act dealing with reference to Court reads as hereunder :

> **Reference to Court :-** (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.
>
> (2) The application shall state the grounds on which objection to the award is taken.

Provided that every such application shall be made :-

a. if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector's award;

b. in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or

within six months from the date of the Collector's award, whichever period shall first expire.

Clause (b) of sub-section (2) of Section 18 of the Act in its application to the State of Andhra Pradesh reads as hereunder :

"in other cases, within two months from the date of service of the notice from the Collector under Section 12 sub-section (2)."

Section 12 of the Act deals with **Award of Collector when to be final** and sub-section (2) of the said Section 12 says that the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. Section 18(2) Proviso (b) of the Act as applicable to the State of Andhra Pradesh specifies "in other cases within two months from the date of service of the notice from the Collector under Section 12 sub-section (2)". It is pertinent to note that the specific stand taken by the writ petitioner is that the petitioner was not served with any notice under Section 12(2) of the Act. Section 30 of the Act deals with **Dispute as to apportionment**. Section 31 of the Act deals with **Payment of compensation or deposit of same in Court.** The second Proviso to sub-section (2) of Section 31 of the Act specifies "Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18". In **SHARADA DEVI Vs. STATE OF BIHAR** while dealing with Sections 18 and 30 of the Act, the Apex Court at paras 26 to 30 of the Judgment held as hereunder :

“By reference to locus.

Under Section 18(1) a reference can be made by Collector only upon an application in writing having been made by (i) any person interested (ii) who has not accepted the award (iii) making application in writing, to the Collector, requiring a reference by the Collector to the Court (iv) for determination of any one of the four disputes specified in the provision and (v) stating the grounds on which objection to the award is taken. For reference under Section 30 no application in writing is required. The prayer may be made orally or in writing or the reference may be made suo motu by the Collector without any one having invited the attention of the Collector for making the reference.

By reference to the disputes referable.

Under Section 18(1) there are four types of disputes which can be referred to Civil Court for determination. They are the disputes (i) as to the measurement of the land, (ii) as to the amount of the compensation, (iii) as to the persons to whom the compensation is payable, or (d) as to the apportionment of the compensation among the persons interested. Under Section 30 the only disputes which are referable are : (i) any dispute as to the apportionment of the amount of compensation or any part thereof, or (ii) a dispute as to the persons to whom the amount of compensation or any part thereof is payable. A dispute as to the measurement of the land or as to the quantum of compensation or a dispute of a nature not falling within Section 30, can either be referred by the Collector under Section 30 of the Act nor would the Civil Court acquire jurisdiction to enter into and determine the same.

By reference to nature of power.

Under Section 18 of the Act the Collector does not have power to withhold the reference. Once a written application has been made satisfying the requirements of Section 18, the Collector shall make a reference. The Collector has no discretion in the matter; whether the dispute has any merit or not is to be left for the determination of the Court. Under Section 30 the Collector may refer such dispute to the decision of the Court. The Collector has discretion in the matter. Looking to the nature of the dispute raised, the person who is raising the dispute, the delay in inviting the attention of the

Court, and so on are such illustrative factors which may enter into the consideration by the Collector while exercising the jurisdiction. If the Collector makes the reference it may be decided by the Court subject to its forming an opinion that the dispute was capable of reference and determination under Section 30 of the Act. In case the Collector refuses to make a reference under Section 30 of the Act, the person adversely affected by withholding of the reference or refusal to make the reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a Writ Petition or a civil suit.

By reference to limitation.

Under Section 18 the written application requiring the matter to be referred by the Collector for the determination of the Court shall be filed within six weeks from the date of the Collector's award if the person making it was present or represented before the Collector at the time when he made his award or within six weeks of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire. There is no such limitation prescribed under Section 30 of the Act. The Collector may at any time, not bound by the period of limitation, exercise his power to make the reference. The expression 'the person present or represented' before the Collector at the time when he made his award would include within its meaning a person who shall be deemed to be present or represented before the Collector at the time when the award is made. No one can extend the period of limitation by taking advantage of his own wrong. Though no limitation is provided for making a reference under Section 30 of the Act, needless to say where no period of limitation for exercise of any statutory power is prescribed the power can nevertheless be exercised only within a reasonable period; what is reasonable period in a given shall depend on the facts and circumstances of each case.

The scheme of the Act reveals that the remedy of reference under Section 18 is intended to be available only to a 'person interested'. A person present either personally or through representative or on whom a notice is served under Section 12(2) is obliged, subject to his specifying the test as to locus, to apply to the Collector within the time prescribed under Section 18(2) to make a reference to the Court. The basis of title on which the reference would be sought for under Section 18 would obviously be a pre-existing title by reference to the

date of the award. So is Section 29, which speaks of 'persons interested'. Finality to the award spoken by Section 12(1) of the Act is between the Collector on one hand and the 'persons interested' on the other hand and attaches to the issues relating to (i) the true area i.e., measurement of the land, (ii) the value of the land, i.e., the quantum of compensation, and (iii) apportionment of the compensation among the 'persons interested'. The persons interested would be bound by the award without regard to the fact whether they have respectively appeared before the Collector or not. The finality to the award spoken of by Section 29 is as between the 'persons interested' inter se and is confined to the issue as to the correctness of the apportionment. Section 30 is not confined in its operation only to 'persons interested'. It would, therefore, be available for being invoked by the 'persons interested' if they were neither present nor represented in proceedings before the Collector, nor were served with notice under Section 12(2) of the Act or when they claim on the basis of a title coming into existence post award. The definition of 'persons interested' speaks of 'an interest in compensation to be made'. An interest coming into existence post award gives rise to a claim in compensation which has already been determined. Such a person can also have recourse to Section 30. In any case, the dispute for which Section 30 can be invoked shall remain confined only (i) as to the apportionment of the amount of compensation or any part thereof, or (ii) as to the persons to whom the amount of compensation (already determined) or any part thereof is payable. The State claiming on the basis of a pre-existing right would not be a 'person interested', as already pointed out hereinabove and on account of his right before pre-existing, the State, in such a case, would not be entitled to invoke either Section 18 or Section 30 seeking determination of its alleged pre-existing right. A right accrued or devolved post award may be determined in a reference under Section 30 depending on Collector's discretion to show indulgence, without any bar as to limitation. Alternatively, such a right may be left open by the Collector to be adjudicated upon in any independent legal proceedings. This view is just, sound, and logical as a title post award could not have been canvassed up to the date of the award and should also not be left without remedy by denying access to Section 30. Viewed from this angle, Sections 18 and 30 would not overlap and would have fields to operate independent of each other."

In **DISTRICT COLLECTOR, KAKINADA Vs. P.NAGABHUSHANA RAO** a Full Bench of this Court while dealing with Section 31(2) second Proviso and Section 18 of the Act held :

> "In the absence of any manner of protest having been specified in the Act and the time when protest is to be lodged, act of filing of an application seeking reference to Civil Court within the period of limitation prescribed under Section 18 of the Act will impliedly infer that the claimant/person interested had accepted the amount with protest. Not expressly lodging protest at the time of receiving amount in such circumstance would not amount to waiver of the right to seek reference under Section 18 of the Act. Unless it is positively shown that the persons interested were made aware of their right to have the compensation determined by a Civil Court and they accepted the amount without any demur, only in such a circumstance, an inference can be drawn that they never intended to seek reference. If a person interested is debarred from exercising his right conferred on him under Section 18 of the Act on the ground that he has not expressly stated that he is accepting under protest, the very purpose for which such right was conferred by the statute would become nugatory and illusory. The law having laid down period of limitation within which reference can be sought and when an application is filed within the prescribed period of limitation, a very valuable right to seek reference for determination of the compensation cannot be taken away merely on a technical plea raised by the State who has deprived the said person of his right to hold the property".

In **ORISSA INDUSTRIAL INFRACTURE DEVELOPMENT CORPORATION Vs. SUPAI MUNDA AND OTHERS** while dealing with notice under Section 12(2) and Section 18 of the Act the Apex Court, at paras 9 and 10, held :

> "It is undisputed that the Award was made on 25-7-92. The alleged agreement was entered into between the authority and the respondent herein on 6-8-92 and the compensation amount was also paid on 6-8-92. As already noticed the

application for reference under Section 18 of the Act was sent by registered post on 17-9-92 and the authority received the same on 18-9-92. Notice under sub-section (2) of Section 12 of the Act was sent on 27-7-92. The High Court has dealt with this question elaborately and arrived at the conclusion that if the period is reckoned from the date of postponing of the application i.e., 17-9-92, the application was filed within 42 days of the receipt of payment. It is undisputed that the application was received on 18-9-92. Therefore, there was only one day's delay.

Section 18 of the Act prescribes the procedure for reference to Court and provides that every application for reference shall be made – (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; and (b) in other cases, within six weeks of the receipt of the notice from the Collector under sub-section (2) of Section 12 or within six months from the date of the Collector's award, whichever period shall first expire. In the present case clause (b) is attracted because the 1st respondent was not present, or represented before the Collector at the time he made his award. Therefore, notice under sub-section (2) of Section 12 was sent to the respondent herein on 27-7-92. It was returned on 29-7-92, said to be after proper service. The evidence on record shows that one Supai Gagrai had put his signatures on the bottom of the notice and received the notice. The name of the respondent herein is Supai Munda. The respondent has denied to have received the notice. It is his say that he is an illiterate person and cannot put his signatures. This will clearly demonstrate that the respondent herein has not received the notice under Section 12(2) of the Act personally. If that is so, the notice upon the respondent was not duly served. The contention of the appellants on this ground, therefore, fails."

Submissions at length were made how to reckon the period of limitation in cases of this nature. In **WARDINGTON LYNGDOH AND OTHERS Vs. COLLECTOR, MAWKYRWAT** while dealing with Sections 18 and 31 of the Act it was held that petitioners receiving

compensation without protest are not entitled to seek reference under Section 18 of the Act and protest after accepting compensation amount is inconsequential and on facts the petitioners plea of lack of knowledge of the jointly signed agreement or its contents was held to be an after-thought. In **YELUGUBANTI GANIRAJU Vs. STATE OF A.P.** it was held that where notice of award under Section 12(2) of the Act was not served on the person interested, the period of limitation for seeking reference to Civil Court does not start and the application filed by the petitioner seeking reference to Civil Court cannot be said to be barred by time though one year had elapsed since passing of the award when award notice was not served on him. Reliance also was placed on **UNION OF INDIA Vs. FILIP TIAGO DE GAMA** and **D.SAI BABA Vs. BAR COUNCIL OF INDIA AND ANOTHER** for the purpose of substantiating the contention in relation to interpretation of statutes and the purpose of Legislation to be given effect in relation thereto. Evidently reliance was placed on these decisions in view of the provisions of Sections 31 and 18 of the Act referred to supra. In **SPECIAL DEPUTY COLLECTOR, L.A. UNIT Vs. DASARI RAMULU AND OTHERS** a Full Bench of this Court while dealing with Sections 12(2) and 18(2) proviso (b) as amended by A.P. State and the starting point of the limitation to seek reference to Civil Court by claimant and notice in proceedings under Section 30 of the Act, it was held that the said notice cannot be substituted with notice of

Collector under Section 12(2) of the Act which is required to be served communicating the period of limitation to seek reference to Civil Court under Section 18(2) proviso (b) of the Act. Though submissions at length were made relating to the reckoning of period of limitation only after the issuance of cheques and the protest memos being filed on the ground that it should be taken that offer had been made only on the said dates, these questions need not detain this Court any longer for the reason that in the light of the specific stand taken that notice under Section 12(2) of the Act had not been served at all, the rejection on the ground of limitation definitely cannot be sustained. While interpreting the different provisions of a particular statute, as far as possible, the provisions are to be harmoniously construed. In the light of the specific averments made in the affidavit filed in support of the Writ Petition and in the absence of any denial relating to the same, this Court is satisfied that the impugned orders cannot be sustained and hence the writ petitioner is bound to succeed. The fact that protest memos had not been filed in a couple of cases would not alter the situation in any way in the light of the decision of the Full Bench referred (2) supra. For the reasons referred to supra, the writ petitioner is bound to succeed and accordingly the Writ Petition is hereby allowed. No order as to costs.

P.S.Narayana.,J

Date : -1-2005

L.R. copy to be marked : YES / No

AM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Twenty Seventh day of January Two Thousand and Five.

ASST.REGISTRAR

To:

One fair copy th Hon'ble Mr.Justice P.S.Narayana (for his Lordship's kind perusal)

1. The Special Tahsildar (Land Acquisition) Manugur,

(at pressent Spl. Dy. Collector)
(Land Acquisition), I.P.T. & Railways, Khammam).

2. 2 C.Cs. to Government Pleader for Land Acquisition

High Court of A.P.

High Court Buildings,

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3. 2 C.D. copies

4. The Under Secretary, Union of India, Ministry of Law, Justice &

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6. 8 L.R. copies.